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18 December 1991

PLANNING AND COMPENSATION ACT 1991: NEW DEVELOPMENT PLANS SYSTEM: TRANSITIONAL ARRANGEMENTS (ENGLAND AND WALES)

Introduction

1. The Secretaries of State have today laid before Parliament the Town and Country Planning (Development Plan) Regulations 1991 (SI 1991 No 2794) ("the Regulations") to come into force on 10 February 1992, thus completing the statutory provisions for the new development plans system under the Planning and Compensation Act 1991 ("the 1991 Act").

2. General guidance on the new system will be given in Planning Policy Guidance note 12, which will be published on 10 February 1992. This circular gives advice on the arrangements for handling the transition from the old system to the new. It does not purport to be an exhaustive guide to the legislation; nor can it give an authoritative interpretation of the law.

Transitional provisions

3. Schedule 4 to the 1991 Act made a number of changes to the development plans provisions of Part II of the Town and Country Planning Act 1990 ("the 1990 Act"). The transitional provisions are set out in Part III of Schedule 4 to the 1991 Act. Paragraph 36 of Part II of that Schedule amends the existing transitional provisions on unitary development plans (UDPs) in Schedule 2 to the 1990 Act. In addition, Regulation 34 of the Regulations makes provision for UDP proposals deposited under the "old law" (paragraph 4 below), Regulation 35 prescribes the manner and form of publication of an authority's statement of policies incorporated in their local plan, minerals local plan, waste local plan or UDP proposals unchanged from an existing local plan (paragraphs 6 to 8, 10, 11, 13 and 24 to 26 below), and Regulation 36 deals

with any conflicts between structure plans and non-compliant local plans made by the same authority (paragraph 29 below). The Regulations save the Town and Country Planning (Structure and Local Plans) Regulations 1982 (SI 1982/555), as amended, on a transitional basis to cover local plan proposals on deposit when the new Regulations come into force (paragraph 17 below).

Unitary Development Plans

4. Paragraph 41(1) of Schedule 4 provides that where UDP proposals have been placed on deposit under the "old law" (ie the 1990 Act as it was immediately before the commencement of the 1991 Act changes to it) they shall be treated as if they had been placed on deposit under the "new law" (ie the 1990 Act as amended by the 1991 Act). Any steps taken to comply with the old law (eg notice of deposit and invitation of objections within the six week period) are to be treated as having been taken to comply with similar requirements under the new law. This means that authorities will not have to repeat steps taken prior to the commencement of the new law.

5. The 1991 Act replaces the transitional provisions in the 1990 Act which deal with the incorporation of local plans into UDPs. The new provisions on the incorporation of local plans apply to all UDPs adopted after the commencement of the 1991 Act, even if put on deposit before commencement. ***At the moment*** operative local plans have to be incorporated into UDPs by virtue of paragraph 4 of Part I or paragraph 17 of Part II of Schedule 2 to the 1990 Act, subject to any alterations specified in Part II of the UDP. Authorities have to indicate in their UDPs the extent, if any, to which the local plans are altered. Provisions of local plans which have not been altered are not open to objection, but application of those provisions to a wider area is open to objection. An authority cannot repeal a local plan in its entirety; nor can they reformulate its provisions without opening them up to the full force of objections.

6. Paragraph 36(2) of Schedule 4 to the 1991 Act substitutes new paragraphs 4 and 17 in Part I and II respectively of Schedule 2 to the 1990 Act. ***In future,*** authorities will be allowed discretion whether or not to incorporate the provisions of operative local plans into UDPs. If an authority do include existing local plan policies in their UDP ("policies" includes proposals) people will be able to object to them, as to any other policies in the UDP, and the authority will have to consider those objections. They will also be considered by the Inspector, and authorities should prepare responses to them. The Inspector ***may*** hear such objections at a public local inquiry but he will have the discretion not to allow an objector to appear (thereby saving valuable inquiry time and resources) ***provided that:***

- ★ the authority have published, and put on deposit with their UDP, a statement identifying a policy in the plan as an existing policy (paragraph 8 below);
- ★ the Inspector is satisfied that the objection relates to a policy identified in such a statement as an existing policy (and that the policy so identified is indeed an existing policy, however expressed: paragraph 7 below); and
- ★ that there has been no significant change in circumstances (eg in matters which might be expected to affect the development of the area or the planning of its development) since the existing policy first appeared in the local plan. The issue of national or regional

policy guidance since the local plan was prepared might constitute such a change if it has a significant bearing on the policy concerned.

The authority will notify all objectors to "existing policies" that if they wish to be heard at the inquiry they will need to satisfy the Inspector that the allocation of inquiry time for this purpose is justified. Submissions to that effect must be made in writing before the pre-inquiry meeting in order to give the authority an opportunity to make a written response. Both the objector and the authority will be able to elaborate orally at the pre-inquiry meeting. The Inspector will notify the parties of his decisions whether or not to hear those objections as soon as possible after the pre-inquiry meeting.

7. An authority are not obliged to publish a statement where they propose to incorporate existing policies but, if they do not do so, anyone objecting to them (in accordance with the Regulations) will have the right to be heard at an inquiry. To take advantage of these new provisions an authority do not have to incorporate an "existing policy" verbatim. They have the flexibility to reword policies provided that the ***substance*** is not changed (ie make changes in wording which do not materially change the effect of the policies themselves). A policy incorporated from an existing local plan but applied to a wider area would not in the Department's view constitute an "existing policy" to the extent that it applied to the wider area; anyone objecting to it would therefore have the right to be heard at a public local inquiry.

8. Regulation 35 provides that an existing policy statement must be made in a prescribed form. This statement of the policies included in the plan proposals which the authority wish to identify as existing policies must be made available for inspection at any place at which the plan has been put on deposit. Where the plan is deposited on or after commencement the statement should be published with the notice of deposit each time that that notice is published (ie once in the *London Gazette* and in at least one local newspaper in two successive weeks). If the plan has been deposited before commencement and the six week objection period is not over at the date of commencement the authority should proceed as described in paragraph 11 below.

9. The following paragraphs apply where a UDP is on deposit at the date of commencement.

(i) UDP on deposit at date of commencement and six week objection period not finished

10. If a UDP is on deposit at the date of commencement, it will be treated as if it had been placed on deposit under section 13(2) of the new law. The six week period for making objections given under the old law will be treated as having been given under the new law for the purpose of complying with Regulation 12. If this six week period has not expired, objections may be made in accordance with the Regulations to the deposited proposals. However, as the new law will apply, objections may be made to policies incorporated unaltered from an existing local plan. In order to give the Inspector at a subsequent inquiry the discretion not to hear objections to such policies the authority will need to prepare the prescribed statement (paragraph 8 above). In such a case it is clearly not possible to publish the statement and make it available for inspection when the plan is deposited.

11. In order that people are aware of the new right to object to existing policies, Regulation 34 provides that where the six week period has not expired at commencement the authority should publish a notice as soon as practicable (once in the *London Gazette* and in at least one local newspaper in two successive weeks). The notice should make it clear that objections may now be made to any policy in the plan, including existing policies incorporated from local plans, and that the objection period is extended by six weeks from the date on which the notice is first published in a local newspaper. Thus the extension to the objection period applies both to objections to existing policies (so that people have a full six weeks in which to make such objections) and to objections to matters which were open to objection before the date of commencement (so that, exceptionally, people will have more than six weeks from the date of deposit to object to such matters). Where an authority in this position wish to publish a statement of existing policies they should (under Regulation 35) publish it with the notice required by Regulation 34 each time that that notice is published.

(ii) UDP on deposit at date of commencement and objection period expired

12. If a UDP is on deposit at the date of commencement and the objection period has expired, subsequent objections to the deposited proposals, including those incorporated from an existing local plan, will not constitute objections made in accordance with the Regulations. There will therefore be no right for those making them to be heard.

13. In both situation (i) and situation (ii) above the deposited proposals will automatically include existing local plan policies since they will have been deposited under the old law (paragraph 5 above). In either case an authority can still take advantage of the new provisions by:

(a) using the modifications procedure (after any public local inquiry) to exclude or reword policies incorporated from local plans. Any such modifications would be open to objection like other modifications proposed by the authority; or

(b) allowing the plan to proceed to adoption and then altering or replacing it within two years of the date of commencement under the provisions of paragraph 41 of Schedule 4 to the 1991 Act.

Option (b) would also apply where the ***UDP had been both deposited and adopted before commencement.***

Structure plans

14. Under the new law authorities will be able to adopt their structure plan proposals themselves (unless called in by the Secretary of State). Where proposals for the alteration or replacement of a structure plan have been submitted to the Secretary of State before the date of commencement but not approved by him by that date, paragraph 42 of Schedule 4 to the 1991 Act provides that the submission of the proposals shall be treated as the sending to the Secretary of State of a copy (under section 33(2)(b) of the 1990 Act as it will be amended) when the proposals are put on deposit. Thus the authority will be able to proceed to adoption on the basis of the new provisions and without having to repeat any steps taken before the date of commencement.

15. Proceeding to adoption would be subject to any direction given by the Secretary of State under section 35(2) to modify the proposals or under section 35A to call in all or part of them. Normally, the Secretary of State would expect to use his powers of direction sparingly (PPG 12 will give further advice). However, during the transitional period, the Secretary of State will generally call in proposals where, at the date of commencement, an examination in public (EIP) has been held or one has been arranged. Such call-ins would be designed to avoid the practical difficulties which would arise if responsibilities were switched at that stage of the procedures. The Secretary of State would meet the cost of any EIPs held after call-in. Similarly, there may be instances where no EIP has been held or arranged but where processing of the proposals has progressed sufficiently far for it to be sensible for them to be called in.

Local plans

16. Under the new law, authorities must prepare district-wide, park-wide, minerals and waste local plans, as appropriate. But there are transitional arrangements to ensure *inter alia* that local plans adopted under the old law continue in force until the plans required by the new law are in place.

17. Where local plans are put on deposit but not adopted (or approved) before the date of commencement they may be seen through to adoption (or approval) on the basis of the old law (including SI 1982/555) under paragraph 43 of Schedule 4 to the 1991 Act. Thus ***any local plan proposals not complying with the new law (for example, because they cover part only of a district) which are not on deposit by the date of commencement cannot then proceed to adoption.*** But this does not mean that the work on them is wasted (see paragraph 31 below).

18. Local plans already in operation at the date of commencement, or which subsequently come into operation by virtue of paragraph 43 of Schedule 4, are known as ***saved local plans.*** The treatment of such plans depends upon whether they are "compliant" or "non-compliant" ie whether or not they comply with the provisions of the new law (paragraph 44 of Schedule 4).

Compliant plans

19. A ***compliant*** plan is a saved local plan which:

either

(a) complies with section 36 of the new law and is prepared by the authority entitled to prepare it under that section. This means, *inter alia*, that the plan must be district-wide or park-wide and prepared by the appropriate district council or National Park authority. A district-wide plan which includes minerals or (in England) waste policies is not a compliant plan;

or

(b) meets the requirements of sections 36 to 38 of the new law as regards a minerals local plan or a waste local plan and is prepared by the authority entitled to prepare it under those provisions (ie a county council or National Park authority).

20. If the plan is a compliant local plan it is to be treated as if it were a local plan, minerals local plan or waste local plan adopted (or approved) under the new law. This will allow such a plan to be altered or replaced on the basis of the new law.

Non-compliant plans

21. A ***non-compliant*** plan is a saved local plan which does not meet the definition of a compliant plan (paragraph 19 above). Examples of non-compliant plans are: action area local plans, subject local plans for other than minerals and waste (eg green belts, derelict land), and local plans for part only of a district. A non-compliant plan only has effect subject to (ie to the extent that it has not been superseded by) a local plan or a minerals or a waste local plan adopted (or approved) under the new law (including any compliant plan so treated). Unlike a compliant plan it cannot be altered or replaced under the new law. When all the plans required for an area by sections 36 to 38 of the new law are in place (for example, if a district have prepared a district-wide local plan, and the county have prepared a minerals local plan and (in England) a waste local plan) any non-compliant plans cease to have effect in that area. So too does any development plan approved under the Town and Country Planning Acts up to and including the Town and Country Planning Act 1962.

22. However, the situation could arise in which, although all the plans required by sections 36 to 38 of the new law are in place, a non-compliant plan includes policies which have not been incorporated in a district-wide local plan, for example, but which are still relevant. To cater for such a situation the Secretary of State has a power to direct that any provisions of a non-compliant local plan shall continue in force (for such period and in relation to such parts of the plan's area as specified in the direction) even though all the plans required by sections 36 to 38 are in place. The Secretary of State can subsequently revoke a direction. Before any direction is made (or revoked) the Secretary of State has to consult the local planning authorities for the area concerned. An example of a situation in which the Secretary of State might wish to give a direction is where green belt policies for the area are contained in a saved county subject plan and there is a district-wide local plan in operation; a direction would enable such policies to continue in force until the local plan was altered to include them. If an authority think that a direction will be needed to continue in force policies in a plan which they have prepared they should contact the appropriate DOE Regional Office or the Welsh Office as early as possible before the last of the plans required for the area by sections 36 to 38 is adopted (or approved).

Status of saved local plans

23. A saved local plan, whether it is compliant or non-compliant, constitutes part of the development plan for the area for as long as that local plan remains in operation.

Incorporation of policies from non-compliant local plans

24. When an authority prepare, alter or replace a local plan under the new law and propose to incorporate in it existing policies from a non-compliant local plan they may publish an existing policy statement and make it available for

inspection (see the advice in paragraphs 6 to 8 above, which is equally applicable here, except for the last sentence of paragraph 8, which relates only to UDPs). Any such statement should be published and made available for inspection when the plan proposals are put on deposit (Regulation 35). Where such a statement is published and a local inquiry is held the Inspector may allow anyone objecting to a policy identified in the statement to appear but he has discretion ***not*** to do so ***provided that*** he is satisfied that the policy is indeed an existing one and there has been no significant change in circumstances affecting the policy since it first appeared in the saved local plan: paragraph 45 of Schedule 4 to the 1991 Act.

25. This does not mean that the authority have to express the policy in the same way as in the saved plan. They have the flexibility to reword policies provided that the substance is unchanged (see paragraph 7 above). These provisions do not affect people's right to object to existing policies or the authority's obligation to consider all such objections which are duly made. Rather, as with UDPs (see paragraph 6 above), they are designed to ensure that the inquiry is not unduly prolonged by hearing objections to policies which have been considered in the context of the saved local plan.

26. Equivalent provision to that made in paragraph 45 of Schedule 4 in relation to local plans is made in paragraph 46 of that Schedule in relation to minerals and waste local plans and the advice in paragraphs 24 and 25 above applies accordingly.

Relationship between structure plan alterations or replacements and saved local plans

27. Where proposals for alteration or replacement of a structure plan are adopted (or approved) at any time after the date of commencement, the structure plan authority have to notify the fact to local planning authorities in their area (other than themselves) and supply them with a statement of whether or not (and, if not, in what particular respects) any *non-compliant* local plans in operation in their areas are in general conformity with the new or altered structure plan (paragraph 47 of Schedule 4 to the 1991 Act). Regulation 36 requires that the statement must be made available for inspection at any place at which the non-compliant plan to which it relates is available for inspection. If proposals for alteration or replacement of a structure plan are withdrawn after the date of commencement (whether the proposals were made before or after that date) the authority have to notify the fact to any authority which have prepared a non-compliant plan which is in operation in their area.

28. In the event of conflict between the provisions of a non-compliant plan and those of the relevant structure plan the provisions of the former prevail ***unless*** the structure plan authority have issued a statement of non-conformity as mentioned in paragraph 27 above (in which case the provisions of the structure plan prevail). Where such a statement has been issued the authority to which it has been issued are advised to prepare their proposals for a local plan for their area under section 36 as soon as practicable.

29. Regulation 36 (made under paragraph 47(7) of Schedule 4) makes equivalent provision to that described in paragraphs 27 and 28 above in relation to conflict between a ***structure plan and a non-compliant plan made by the same authority.*** Thus where proposals for the alteration or replacement of a structure plan are adopted (or approved) the authority must prepare a

statement that any non-compliant plan in operation in their area is, or is not, in general conformity with the altered or replacement structure plan. The statement must be made available for inspection at any place at which the non-compliant plan to which it relates is available for inspection. A statement of non-conformity must specify in what particular respects the non-compliant plan is not in general conformity. In the event of conflict between the provisions of an altered or replaced structure plan and those of a non-compliant plan prepared by the same authority the provisions of the latter prevail ***unless*** the non-compliant plan is one stated ***not*** to be in general conformity with the altered or replaced structure plan (in which case the provisions of the structure plan prevail).

30. As far as a ***compliant*** plan is concerned, if there is any conflict between its provisions and those of the relevant structure plan, sections 35C, 39 and 46(10) of the new law apply as they apply to local plans prepared under section 36. Thus the provisions of the local plan prevail over any conflicting provisions in the relevant structure plan ***unless*** the structure plan authority have issued a statement that the local plan is not in general conformity (and, if so, in what particular respects) with the altered or new structure plan and the local plan has not been altered or replaced since the statement was supplied. (Under Regulation 30 the statement must be made available for inspection at any place at which the plan to which it relates is available for inspection.) In that situation the provisions of the structure plan prevail. Under section 39, if an authority have been supplied with a statement (under section 35C) that the local plan is not in general conformity with the structure plan they must consider whether they need to prepare proposals for the alteration or replacement of that local plan.

Other matters

(a) *Consultation on development plans*

31. Paragraph 48 of Schedule 4 to the 1991 Act provides that consultation undertaken before the date of commencement under the old law counts for the purposes of the requirements of the new law. This is designed to ensure that preparatory work on plans carried out before commencement does not go to waste, but any additional consultation requirements imposed by the new law would have to be complied with. Subject to that, consultation on proposals for a district-wide local plan or part-district local plan which had not reached deposit by the date of commencement would not need to be repeated for the purposes of the district-wide plan deposited under the new law. (There is no equivalent provision in relation to ***publicity*** undertaken before the date of commencement under the old law since, under the new law, publicity is a matter for the authority's discretion.)

(b) *Joint plans*

32. Paragraph 49 of Schedule 4 empowers the Secretary of State to give directions modifying the transitional provisions of Part III of Schedule 4 to deal with any plans prepared jointly by two or more authorities. For example, a joint plan might be compliant in one authority's area and non-compliant in another's. Before making any such directions the Secretary of State would consult the authorities concerned. Authorities with joint plans should discuss

as soon as possible with the appropriate DOE Regional Office/Welsh Office what might be needed by way of a direction in their particular circumstances.

(c) *Questioning the validity of development plans*

33. Paragraph 50 of Schedule 4 provides that proposals to make, alter, repeal or replace a plan adopted under the old law may be challenged after the date of commencement under section 287 of the old law (ie, under that section before its amendment by paragraph 31 of Schedule 4). Section 287 requires any application to the High Court to be made within six weeks of adoption. Thus, subject to that requirement, an application made after commencement may relate to proposals adopted ***before*** commencement. Any application under section 287 of the old law relating to proposals adopted ***after*** commencement could relate only to saved local plans.

(d) *The Isles of Scilly*

34. Paragraph 51 of Schedule 4 provides that an order under section 319 of the new law may make transitional provision in connection with any development plan in force in the Isles of Scilly. The Secretary of State will consult the Council of the Isles of Scilly before making any order to this effect.

Effect on local government manpower and expenditure

35. This circular gives advice on the provisions of the legislation and should of itself have little effect on local government manpower or expenditure.

Enquiries

36. Any enquiries about this circular should be addressed to Mr J. Dobson (Department of the Environment: telephone: 071-276 3888) or to Mr L. Owen (Welsh Office: telephone: 0222 823732).

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